
June 9, 2022

Agenda Item 9.a.

BAHFA Nonprofit Public Benefit Corporation

Subject:

Adoption of Resolution No. 15 approving the creation of and appointment by BAHFA of board members to an affiliated California nonprofit public benefit corporation incorporated for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority

Background:

The San Francisco Bay Area Regional Housing Finance Act (California Gov. Code, sec. 64500, et seq.), gives BAHFA the authority to “solicit and accept gifts, fees, grants, loans and other allocations from public and private entities”. It also gives BAHFA the “express or implied powers necessary to carry out the intent and purposes of the [legislation].” Based on these statutory provisions, and through its use of MTC staff under Gov. Code sec. 64520(i), BAHFA can direct the creation of a nonprofit. The purpose of the nonprofit would be to carry out the clear intent of the legislation: to accept gifts, fees, grants, loans and other allocations to expend on activities in furtherance of BAHFA’s authorized activities. Such a purpose of a nonprofit would qualify for nonprofit, tax exempt status under IRC 501(c)(3) as lessening the burden on government.

Nonprofit Corporation Organizational Elements:Membership and Brown Act Considerations

Under Government Code section 54952(c)(1), the Ralph M. Brown Act (Gov. Code § 54950, et seq.) will apply to the board meetings for a nonprofit created to facilitate BAHFA’s activities.

Accepting Brown Act applicability, and in the interest of streamlining decision making for the nonprofit, given its restricted purpose and scope, it is recommended that the proposed nonprofit’s board of directors consist of three people, one of which should be BAHFA’s Director. Staff recommends that the BAHFA Board appoint two of its members to the proposed BAHFA-affiliated nonprofit. The BAHFA Board members would serve on the board of the proposed nonprofit for their term in office.

Incorporation

The MTC General Counsel’s office and other staff will work with outside counsel to file Articles of Incorporation with the California Secretary of State and create the required organizational documents, such as by-laws. Once the initial organizational documents are filed with the State, the proposed nonprofit’s board of directors would meet to assume responsibility for the organization’s activities, which will include filing state and federal applications for tax-exempt status. The proposed nonprofit will also need to execute certain agreements, such as a funding agreement between the nonprofit and BAHFA to enable BAHFA’s receipt of gifts, fees, grants,

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etc., and an agreement between MTC and the nonprofit where MTC agrees to provide staffing services to the nonprofit.

Once tax-exemption is approved for the nonprofit, it will apply retroactively to the date of incorporation. It is therefore recommended that incorporation proceed as quickly as possible in order to enable receipt of philanthropic grants. Donors can benefit from tax deductions once retroactivity is applied. BAHFA is currently working with at least one major donor who requires investment through a public benefit corporation, so it is important to advance this work quickly.

Issues:

None.

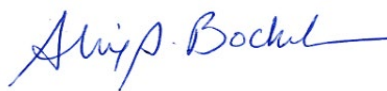
Recommended Action:

The BAHFA Oversight Committee is requested to recommend Bay Area Housing Finance Authority adoption of Resolution No. 15 approving the creation of and the appointment by BAHFA of board members to an affiliated California nonprofit public benefit corporation incorporated for the purpose of receiving funds to facilitate the mission and mandate of the Bay Area Housing Finance Authority.

Attachment:

- A. BAHFA Resolution No. 15
- B. Presentation

Reviewed:



Alix Bockelman